IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

WALTER FLEISHER COMPANY,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Court of Appeal of
the State of California,
Second Appellate District
AND
PETITION FOR CONSOLIDATION, IN THE EVENT CERTIORARI IS GRANTED, WITH SEARS, ROEBUCK & CO. V. COUNTY OF LOS ANGELES
OCTOBER TERM, 1978 78-1577

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Respondents.

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Walter Fleisher Company, Inc., a corporation, respectfully prays that a writ of certiorari issue to the Court of Appeal of the State of California, Second Appellate District, to review that court's decision holding that California Revenue and Taxation Code Section 225 (set forth in Appendix "A" hereto), provided an unfair exemption from property taxes for imported goods, thereby discriminating against interstate commerce, in contravention of the Commerce Clause of the United States Constitution.

In holding Section 225 unconstitutional the court relied on an earlier decision of the Court of Appeal in Zee Toys v. County of Los Angeles,

85 Cal. App. 3d 763, 149 Cal. Rptr. 750 (1978). This Court granted certiorari in the Zee Toys case, sub. nom. Sears, Roebuck & Co. v. County of Los Angeles, October Term, 1978, No. 78-1577, on October 1, 1979. The Supreme Court of California denied a timely Petition for Hearing.

OPINION BELOW

The opinion of the California Court of Appeal, Second Appellate District, was not certified for publication and will not be reported. A copy of the opinion is set forth in Appendix "B" hereto.

JURISDICTION

The decision of the Court of Appeal was filed July 25, 1979. A Petition for Hearing in the California Supreme Court was denied on September 20, 1979.

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether California Revenue & Taxation Code Section 225, which grants a property tax exemption to imported inventories no longer in transit, but intended for transshipment out of the State of California, violates the Commerce Clause of the

of the United States Constitution because a similar exemption is not provided to interstate goods.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States, which grants to Congress the right: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes."

The state statutes involved are California Revenue and Taxation Code Sections 225 and 225.1, set forth in Appendix "A."

HOW THE FEDERAL QUESTION AROSE

The question presented in this petition was considered on the merits by the California Court of Appeal in the opinion filed by that court. Since such claims were passed upon by the highest court hearing this case, there is no preliminary issue as to the proper presentation of the federal claims. (See Raley v. Ohio, 360 U.S. 423, 436 (1959).)

The Court of Appeal opinion demonstrates that the question raised in this petition was both considered and decided, the court stating:

"The effect of this statute is to provide a property tax exemption for goods in foreign commerce. No such exemption is provided, however, for goods in California which are part of interstate commerce. In Zee Toys, Inc. v. County of Los Angeles, supra, 85 Cal. App. 3d 763, the court concluded that the tax is a discriminatory one, and as such is forbidden by the Commerce Clause of the United States Constitution."

PETITION FOR CONSOLIDATION

Pending before this Court is Sears, Roebuck & Co. v. County of Los Angeles, October Term, 1978, No. 78-1577. The petition for writ of certiorari was granted by this Court on October 1, 1979.

The facts in the instant case are almost identical to the facts in Sears, Roebuck & Co. v. County of Los Angeles. In both instances the Petitioner held imported inventory in warehouses located in Los Angeles County pending transshipment out of the State of California. The only distinction is that Sears, Roebuck & Co. is a retailer, and Petitioner herein is a wholesaler. It is submitted that such distinction has no legal effect on the case; however, to the extent there is or may be claimed any distinction, consolidation will provide a resolution of all of the questions involved regarding a resolution of all of the questions involved regarding the validity of

California Revenue and Taxation Code Section 225.

If this Court grants this petition for certiorari, and consolidates, Petitioner herein is willing to be bound by the briefing schedule set forth by this Court for Sears, Roebuck & Co. v. County of Los Angeles. The County of Los Angeles, Respondents in both cases, has consented to consolidation in the event this Court grants the petition for certiorari. Such consent is attached as Appendix "C" hereto.

STATEMENT OF THE CASE

Following the California Supreme Court decision in Volkswagen Pacific v. City of Los Angeles, 7 Cal. 3d 48, 496 P.2d 1237 (1972), assessors throughout the State of California began denying the import-export exemption to importers who had unloaded merchandise from seagoing cargo containers. As a result of such denial, importers in large numbers began leaving the State of California and finding warehousing opportunities in other areas of the country.

In response to this deteriorating economic situation, the California Legislature passed Revenue and Taxation Code Sections 225, et seq., commonly known as the California Free Port Law.

Section 225 provides an exemption from ad valorem property taxes for (1) personal property manufactured or produced outside this State and

brought into the State for transshipment to points outside the United States, and (2) personal property manufactured or produced outside of the United States and brought into this State for transshipment to points outside of this State. It is patterned after free port or transshipment statutes enacted in approximately 35 other states. This and Zee Toys v. County of Los Angeles, Sears, Roebuck & Co. v. County of Los Angeles, supra, are the first cases in which any state statute providing a transshipment exemption has been struck down by a state or federal court.

Petitioner Walter Fleisher Company, Inc., is an importer, warehousing goods in the County of Los Angeles for sale and subsequent transshipment to customers, both within and without the State of California. For the 1976-1977 tax year, petitioner applied for and was denied an exemption. Petitioner filed suit seeking a refund, and judgment was entered for petitioner in the trial court on a motion for summary judgment.

The County of Los Angeles and City of Los Angeles took an appeal from the judgment. Prior to decision in the instant case, the Court of Appeal, Second Appellate Distict, Division Three, held Revenue and Taxation Code Section 225 unconstitutional in the consolidated case of Zee Toys v. County of Los Angeles and Sears, Roebuck & Co. v. County of Los Angeles, supra. Relying upon the Zee Toys decision as controlling authority, the Court of Appeal reversed the instant judgment, holding that Section 225 violated the Commerce Clause of the United States Constitution, that the local government defendants had standing to raise the constitutional

objection, and that the appropriate remedy was to invalidate the exemption rather than to extend the exemption to the parties against whom the Court of Appeal felt the statute discriminated.

REASONS FOR GRANTING THE WRIT

A. THE COURT OF APPEAL HAS DECIDED A FEDERAL CONSTITUTIONAL QUESTION OF SUBSTANCE IN A MANNER CONTRARY TO APPLICABLE DECISIONS OF THIS COURT.

The Court of Appeal decision used a standard which would strike down any state statute differentiating between interstate and foreign commerce, no matter how reasonable the distinction. Such interpretation is in contrast to the modern trend of decisions allowing greater latitude to the states in instituting taxing policies.

In Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976), this Court overruled Low v. Austin, 80 U.S. (13 Wall.) 29 (1972), holding that nondiscriminatory ad valorem property taxes did not constitute an import or export under Article I, Section 10, Clause 2 of the U.S. Constitution.

In Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), this Court overruled Spector Motor Service v. O'Connor, 340 U.S. 602 (1951), and held that a state, under appropriate conditions, may tax directly the privilege of conducting interstate business.

In Washington Revenue Dept. v. Assoc. of Washington Stevedoring Companies, 435 U.S. 734 (1978), this Court overruled Puget Sound Stevedoring Co. v. Tax Commissioner, 302 U.S. 90(1937), and put to rest the direct/indirect test, and reiterated the necessity to balance the burden placed on interstate commerce by the benefits to the State. This Court stated: "Respondents, therefore, have demonstrated no impediment imposed by the tax upon the regulation of foreign trade by the United States." (435 U.S. 754.)

In Boston Stock Exchange v. State Tax Comm'r., 429 U.S. 318 (1977), this Court invalidated a New York tax scheme which was designed to provide a commercial advantage to local businesses (the New York Stock Exchange) to the detriment of out-of-state stock exchanges. The Court, however, cautioned:

> "On various occasions when called upon to make the delicate adjustment between the national interest and free and open trade and the legitimate interest of the individual States in exercising their taxing powers, the Court has counseled that the result turns on the unique characteristics of the statute at issue and the particular

circumstances in each case."
(429 U.S. 329.)

The statute involved in the instant case makes no distinction between out-of-state and in-state residents or businesses. On the contrary, both are given the economic advantage of utilizing the Free Port Law if their goods qualify. There was no evidence or finding of interference with commerce. The Court of Appeal assumed that any distinction had an effect on interstate commerce, and applied a "per se" standard on the grounds that any interference or potential interference constituted an impermissible burden under the Commerce Clause. This case therefore raises an important issue concerning the limitations imposed by the Commerce Clause on the power of a state to enact tax statutes to meet local needs.

The inventory in the case had come to rest in California, and was not still in transit for purposes of prohibiting taxation under the Commerce Clause. Such goods were therefore part of the mass of goods in the State of California, subject to ad valorem property taxes under Michelin v. Wages, supra, and the State may require that they participate and bear their fair share of local services. However, unlike the issue in Michelin v. Wages, the question now is whether the State must tax such inventory together with all other inventory in the State.

B. REVIEW BY THIS COURT IS WARRANTED TO RESOLVE A CONFLICT BETWEEN STATE COURT DECISIONS WITH RESPECT TO THE CONSTITUTIONALITY OF "FREE PORT LAWS."

It is common practice for states to encourage local industry by providing tax exemptions. Examples are domestic wines while aging in California, dairy products in Wisconsin, certain fish products in Louisiana, and wheat products in the Midwestern states. With increasing frequencies states have been providing exemptions to inventories, and especially inventories stored for transshipment. "Not only are inventories exempt in the few but very important states that exempt all personal property . . . but they are wholly or partially exempt in numerous other states and are almost universally exempt if they have been brought into a state for storage or other limited activities before being shipped out of the state." (National Tax Journal, Property Tax Developments: Modernization, Classification, Site Value Taxation, 19:322, 324 (Sept. 1976).)

Such classification statutes are tested under Equal Protection principles.

Over 35 states have some type of free port exemption. A substantial number of these statutes grant out-of-state or foreign products an exemption which is denied to similar products manufactured or grown in the United States or in the state in

question. These distinctions are based on the origin of the goods, the same distinction struck down in the instant case.

In Appeal of Martin (S. Ct. N. C., 1974) 209 S. E. 2d 766, the court upheld a statute providing an exemption based on the origin of the goods and based on the residence of the owner of the goods. The statute specifically described its purposes:

> "It is hereby declared to be the policy of this state to use its system of property taxation in such manner, through the classification of the aforementioned property, as to encourage the development of the ports of North Carolina . . . [and] to encourage the development of the State of North Carolina as a distribution center." (Emphasis added.)

Under the North Carolina statute a distributor, such as Petitioner, who warehouses in non-public facilities would: (a) be taxed on goods purchased domestically; but, (b) given an exemption on imported goods. This is the same distinction struck down in the instant case. (See, State Bd. of Tax Comm'rs. v. Carrier Corp. (S. Ct. Ind., 1977) 365 N. E. 2d 1153, 1385.)

If Boston Stock Exchange and Michelin Tire Corp. have been correctly interpreted in the instant case and in Zee Toys, then both the North Carolina and Indiana taxing schemes would also have to fail for violating the Commerce Clause. (See also, Nash Sales v. City of Milwaukee (S. Ct. Wisc.,

1929) 224 N.W. 126.)

In Allied Stores of Ohio v. Bowers, 358 U.S. 522, 3 L.Ed.2d 480, 79 S.Ct. 437 (1959), an Ohio statute exempted merchandise belonging to non-residents held in storage but taxed similar property belonging to residents. This Court upheld the statute against Equal Protection arguments.

In Raley & Bros. v. Richardson, 264 U.S. 157 (1924), this Court upheld a Georgia tax upon brokers or commission merchants dealing in intra-state goods, which tax was not imposed upon similar brokers dealing in goods in interstate commerce. This Court rejected arguments that such distinction violated the Commerce Clause.

According to the Japan Lines Ltd. v. County of Los Angeles, ___ U.S. ___, 99 S.Ct. 1813 (1979), the policies animating the Import-Export Clause and the Commerce Clause (with regard to foreign commerce) are much the same: (1) to permit the federal government to speak with a single voice in regulating commercial relations with foreign governments, (2) to prevent the States from diverting import revenues to their treasuries rather than the federal treasury, and (3) to prevent States with ports of entry from exacting tolls which raise the price of goods to the rest of the Nation. 99 S.Ct. at 1822, n. 14. It is readily apparent that none of these policies can be violated by an exemption, as opposed to a tax. The section 225 transshipment exemption does not frustrate the attainment of federal uniformity of tax treatment of imports and does not involve any risk of retaliation from abroad. Cf. 99 S.Ct.

at 1823-24. The transshipment exemption invites reciprocity of tax relief for our expoerts rather than inviting the retaliation that a tax would encourage in similar circumstances. Manifestly, there is no violation of the second policy behind the Import-Export Clause and the foreign Commerce Clause for the simple reason that a tax exemption cannot divert federal import revenues to state coffers. As to the third policy, the transshipment exemption invites reciprocity of tax relief for United States exports rather than inviting the retaliation that a tax on foreign commerce might encourage.

In short, the principal purpose of the federal constitutional provisions respecting foreign commerce is to assure that the States do not impede or obstruct imports and exports. While a tax can burden foreign commerce and obstruct commercial intercourse between nations, a tax exemption has no such effect. The Court of Appeal in Zee Toys missed this fundamental distinction entirely and plain misunderstood the policy behind the federal constitutional provisions applicable to foreign commerce. The Court of Appeal in the instant case followed Zee Toys in deference to the principle of stare decisis. Nevertheless, the error in both Court of Appeal decisions is clear.

SUMMARY

The shield of the Commerce Clause is generally sought by taxpayers attempting to prevent state local taxation. Rarely if ever has such shield been

successfully invoked by a taxing subdivision of the state to attack the state's own taxing scheme.

In Boston Stock Exchange, supra, this Court struck down, on Commerce Clause grounds, a New York taxing scheme providing benefits to residents, to the detriment of non-residents. In Allied Stores of Ohio, supra, this Court upheld an Ohio statute providing a tax benefit to nonresidents to the exclusion of residents, attacked on the basis of Equal Protection.

In the instant case no distinction is made between residents and nonresidents; each are afforded the benefits of the transshipment exemption. The statute in question merely provides an exemption to one type of goods, to wit, goods which had been imported from abroad.

In Japan Line, Ltd. v. County of Los Angeles, supra, this Court held that California property tax applied to foreign owned instrumentalities of international commerce prevented the Federal Government from speaking with one voice in international trade. In contrast, in the instant case the goods which are exempted have come to rest in California, are part of the mass of goods located in the state, and are fully subject to the power of the state. (Michelin Tire v. Wages, supra.) The risk that foreign commerce will be burdened by the instant exemption is so remote that it can be said to be nonexistent. (Bob-Lo Excursion Co. v. Michigan, 33 U.S. 28 (1948).)

To allow the California Court of Appeal decision to stand would place in jeopardy free

port or transshipment statutes throughout the nation, it would question every local statute attempting to encourage public policy or local economic goals by providing benefits to one type of activity or product while denying them to other activities or products. The decision is in conflict with the results and reasoning of Michelin v. Wages, Complete Auto Transit, Inc. v. Brady, Washington Rev. Dept. v. Stevedoring Ass'n., Boston Stock Exchange v. State Tax Comm'r., and Raley & Bros. v. Richardson.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be granted, and this case consolidated with Sears, Roebuck & Co. v. County of Los Angeles, October Term, 1978, No. 78-1577, and the parties directed to comply with the same briefing schedule.

Respectfully submitted,

GERALD T. MANPEARL
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Attorneys for Petitioner

APPENDIX A

"Section 225. Personal property manufactured or produced (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transhippment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property.

"Section 225.1. A person claiming an exemption under Section 225 may either claim this exemption by (1) a percentage method of determining property held for transshipment on hand at a particular location by allocating a portion of the total inventory, using the percentage determined by dividing the total out-of-state shipments by the taxpayer from that location during the preceding year by the total of such shipments from that location during such year, or (2) an actual method as evidenced by contracts of sale on the tax lien date, and a full, true and correct inventory of all property held for transshipment together with the date of receipt of the same, the date of withdrawal of the same, the point of origin thereof, and the point of ultimate destination thereof.

"Section 225.2. Any property exempted under Section 225 which is reconsigned to a final destination in this state shall be subject to excape assessment procedures.".

APPENDIX B

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

WALTER FLEISHER CO., INC., Plaintiff and Respondent,	)	2d Civil No. 53651
vs.	)	(Super. Ct. No.
COUNTY OF LOS ANGELES and CITY OF LOS ANGELES,	)	C195366)
Defendants and Appellants.	)	Court of Appeal-Second Dist.
	)	FILED Jul 25 1979
		Clay Robbins, Jr., Clerk
		Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. George M. Dell, Judge. Reversed.

John H. Larson, County Counsel, and James Dexter Clark, Deputy County Counsel, for Defendants and Appellants.

Baker, Ancel, Redmond & Hall; Evans, Manpearl & Harter and Gerald T. Manpearl, for Plaintiff and Respondent.

Defendants have appealed from a judgment entered in favor of plaintiff following the granting of plaintiff's motion for summary judgment.

Plaintiff's motion for summary judgment was premised on its claimed right to tax exemption under California Revenue and Taxation Code section 225. That statute having been declared unconstitutional in Zee Toys, Inc. v. County of Los Angeles (1978) 85 Cal. App. 3d 763, (hrg. den. Cal. S. Ct. 1/17/79), we reverse the judgment.

Plaintiff is an importer of goods imported and manufactured in foreign countries. The goods are shipped to plaintiff in California where they are unloaded into his warehouses, awaiting sale and delivery to his customers located throughout the United States. The goods are stored for indefinite periods of time awaiting such sale and delivery. Ad valorem property taxes were assessed by the County Assessor of Los Angeles for the fiscal year July 1976 through June 1977. Those taxes were imposed on all of the merchandise stored in plaintiff's warehouses on the lien date, March 1, 1976. Plaintiff paid the assessed taxes under protest, claiming an exemption under Revenue and Taxation Code section 225. After exhausting his administrative remedies, plaintiff filed the within action against the County of Los Angeles, seeking refund of the taxes paid pursuant to said exemption. Summary judgment in the sum of $3,861.40 was awarded to plaintiff on that complaint.

Appellants challenge the validity of the court's ruling contending, inter alia, that the statute is

unconstitutional. Revenue and Taxation Code section 225 provides as follows:

> "Personal property manufactured or produced, (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property."

The effect of this statute is to provide a property tax exemption for goods in foreign commerce. No such exemption is provided, however, for goods in California which are part of interstate commerce. In Zee Toys, Inc. v. County of Los Angeles, supra, 85 Cal. App. 3d 763, the court concluded that the tax is a discriminatory one, and as such is forbidden by the commerce clause of the United States Constitution. The court cited and quoted from numerous United States Supreme Court decisions which have established, explained, and expanded the commerce power of the United States government and defined the limits of the power of states to interfere therewith. Those cases establish that both foreign commerce and interstate commerce are subject to the exclusive control of the federal government and that "the very purpose of the

commerce clause was to create an area of free trade among the several states." (McLeod v. J. E. Dilworth Co. (1944) 322 U.S. 327, 330.)

Respondent argues here, as did respondents in Zee Toys, that the effect of the exemption in question is to encourage foreign commerce; respondent argues that this is distinguishable from a tax, duty, or impost which interferes with and thus discourages foreign trade. The response of the court in Zee Toys is apposite here:

> "In any event, there is no merit to the argument that only the imposition of discriminatory burdens upon foreign commerce interferes with Congress' power to regulate in that field. As pointed out in Michelin, supra, 423 U.S. at p. 286 [46 L.Ed.2d at p. 504], discriminatory taxes, if 'applied selectively to encourage or discourage . . . importation in a manner inconsistent with federal regulation' are invalid. (Italics added.)" (Id. at p. 775.)

Respondent has cited numerous cases in which state taxing schemes have been found not violative of the United States Constitution and argues that thus Zee Toys was wrongly decided. Respondent also contends it has been unable to find any other case which invalidates an exemption from tax, as opposed to a tax. Even if no such cases exist, the distinction between an invalid tax and an invalid exemption is one of form rather than substance. The evil sought to be prevented is the result--the taxation of some forms of commerce to the exclusion of others. We see no

significance in the fact that California chose to tax interstate commerce by enacting an express exemption for foreign commerce. The discriminatory effect as between interstate and foreign commerce is the same.

Respondent contends that a recent decision of the United States Supreme Court, Japan Line, Ltd. v. County of Los Angeles, ___ U.S. ___ (47 U.S. Law Wk. 4477), "has in fact placed grave doubt upon the validity of the holding of Zee Toys v. County of Los Angeles." We disagree. In Japan Line, the California Supreme Court had upheld a property tax imposed on appellant's containers temporarily present in California. The containers were based, registered, and subjected to property tax in Japan, and were used exclusively in foreign commerce. The U.S. Supreme Court addressed the issue of whether instrumentalities of commerce used "exclusively in international commerce, may be subjected to apportioned ad valorem property taxation by a state." (Id. at p. 4480.) The court observed: "If the state tax 'is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State,' no impermissible burden on interstate commerce will be found. [Citations.]" (Emphasis added.) (Id. at p. 4480.)

But, the Court added, when construing the power to regulate commerce with foreign nations, "a more extensive constitutional inquiry is required."

The court held that, in addition to answering the nexus, apportionment, and nondiscrimination issues, a court must also inquire whether the tax creates a substantial risk of international multiple taxation and whether the tax prevents the federal government from speaking "with one voice when regulating commercial regulations with foreign governments." (Id. at p. 4481.)

Respondent's contention that the exemption in the instant case must be upheld because of the ruling in Japan Line is not well taken. In this case, we do not validate the imposition of a tax on foreign commerce. Rather, we invalidate a discriminatory exemption which favors foreign commerce over interstate commerce. As the language quoted from Japan Line clearly reflects, a tax which discriminates against interstate commerce is violative of the United States Constitution. Inferentially, of course, an exemption which has similar discriminatory effect is equally invalid.

We believe that Zee Toys, supra, is well reasoned and rightly decided. We agree that, "by granting an exemption to foreign goods which is withheld from interstate goods, Revenue and Taxation Code section 225 violates the commerce clause of the United States Constitution." Zee Toys, Inc. v. County of Los Angeles, supra, 85 Cal. App. 3d at p. 777.)

Standing to Raise the Constitutional Issue

Respondent contends that appellants do not have standing to contest the constitutionality of

section 225, citing Community Television of So. Cal. v. County of Los Angeles (1975) 44 Cal. App. 3d 990, and Appeal of Martin (1974) 286 N.C. 66, 209 SE 2d 766. Those cases held that government entities did not have standing to challenge the validity of state statutes under the equal protection clause of the federal Constitution, since the plaintiffs were not members of the "class allegedly discriminated against." This same contention was rejected in Zee Toys, the court there noting that the challenge in this case is not one of equal protection. Therefore, the class-membership requirement does not apply. Appellants have standing because they have "a personal stake in the outcome" of this litigation. (Baker v. Carr (1962) 369 U.S. 186, 204.)

The judgment granting appellant exemption from county ad valorem property taxes under Revenue and Taxation Code section 225 is in error.

The judgment is reversed; each party to bear its own costs.

NOT FOR PUBLICATION.

ALARCON, J.

We concur:

KINGSLEY, Acting P. J.

JEFFERSON (Bernard), J.

APPENDIX C

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Re: Sears, Roebuck & Co. v. County of Los Angeles; No. 78-1577
and
Walter Fleisher & Co. v. County of Los Angeles; No. C 195366

Dear Mr. Manpearl:

This will confirm that in the event the United States Supreme Court grants your Petition for Writ of Certiorari in Walter Fleisher & Co. v. County of Los Angeles, we have no objection to such case being consolidated with Sears, Roebuck & Co. v. County of Los Angeles No. 78-1577, as long as the issues you raise are the same as those in the Sears matter. Because the Court Clerk has

indicated that no time extensions will be allowed, we cannot stipulate to the consolidation if any other matter than the problem of the constitutionality of §225 is raised.

Very trul yours,

JOHN H. LARSON
County Counsel

/s/ James Dexter Clark

By
JAMES DEXTER CLARK
Deputy County Counsel

JDC:lvw